



**Property Casualty Insurers  
Association of America**

Shaping the Future of American Insurance

2600 South River Road, Des Plaines, IL 60018-3286

EXHIBIT 2  
DATE 4.11.07  
SB 138

**Statement filed with the House Taxation Committee  
on Senate Bill 138**

The Property Casualty Insurers Association of America (PCI) urges the House Taxation Committee to vote No on SB 138. This bill, although well intentioned, is an extremely overbroad solution to a problem that has already been solved, and while its supporters estimate it would raise revenue from "2-4" corporations, it would likely increase reporting burdens for hundreds of companies doing business in Montana. PCI represents more than 1,000 member property/casualty insurers which write over \$194 billion in annual premiums, over 40 percent of the property/casualty premiums written in the United States. Two hundred forty-four of our members provide insurance in Montana, writing almost \$517 million in premiums annually (in 2005), 34.8% of the Montana property/casualty insurance market.

- PCI's members strongly support proper corporate governance and compliance with federal and state tax law. We agree that insurers should pay their fair share in taxes in the states in which they do business.
- The fiscal note for this bill refers to "the preferential tax treatment given to insurance companies." In fact, in Montana, even more than in most other states, insurers already pay far more than their share of corporate taxes. While corporations are generally subject to a business tax on their net income, Montana imposes a 2.75% tax on insurance companies based on their premiums written, which is much closer to a tax on gross income. Even though the premium tax rate is lower than the corporate tax rate, the tax base is much larger, and therefore insurers bear a significantly-higher relative tax burden than the rest of the business community. In 2005 insurers themselves paid more than \$61 million in premium taxes in Montana.<sup>1</sup> Insurers are willing to pay the premium tax, even though it is higher than the income tax, because it is simpler, more predictable and is used in almost all of the states. In addition, Montana's premium tax is already substantially higher than the national average (approximately 2%), and higher than that of all neighboring states except Idaho (also 2.75%). Because of retaliatory taxation, this high rate already penalized Montana insurers writing business in other states.
- SB 138 as first presented was an overreaching attempt by the Department of Revenue to impose California-based tax restrictions on corporations doing business in Montana that happen to have insurance companies in a commonly controlled group. The basis for SB 138 is a California statute that was enacted in 2004 to solve a specific problem created by a California court decision. In most cases the language of SB 138 is a more-or-less direct "lift" from California AB 263. The 60% ratio test contained in SB 138 is supported by no statistical analysis of which we are aware, either in California or in Montana.
- We recognize that the bill has been amended extensively in an attempt to remove legitimate insurers and corporations in a commonly controlled group from the dividend limitation, but those same corporations and insurers believe that SB 138 would still allow the Department of Revenue to demand extensive amounts of information on a routine basis in order to dispel any suspicion of insurance stuffing. That demand for information would be especially burdensome for small Montana corporations that happen to have an insurer in a commonly controlled group. Along with the state's high premium tax, this would increase insurance costs for Montana policyholders and continue to make the Montana insurance market less attractive for insurers.

<sup>1</sup> Property/casualty insurers paid over \$42 million of that total. In contrast, under the Montana corporate income tax property/casualty insurers would probably have paid less than one-third of this amount in 2005.

- The premium and earnings information required in Section 2, subsections (2) and (3), is currently filed annually with the State Auditor in Montana, or the insurance regulator in other states, and should be readily available as a matter of public record. Therefore, it is important to ask what information the Department of Revenue seeks in SB 138 that is not currently available to it. It is also important to ask what information requirement or enforcement power is present in SB 138 that the Department of Revenue does not have now as it conducts audits of Montana businesses that pay the corporate income tax.
- We believe that Congress eliminated the primary impetus for "stuffing" income-producing assets in insurance companies in 2004 by revising the tax exemption in Internal Revenue Code section 501(c)(15) to apply only to companies with annual gross receipts of \$600,000 or less, rather than the prior \$350,000 annual limitation on premiums. We note that the fiscal note for SB 138 projects that the bill may impose additional taxes on only "up to four" corporations doing business in Montana.
- SB 138 continues to be a solution in search of a problem.

For all of these reasons, PCI respectfully urges this Committee not to approve SB 138.

April 11, 2007